

ORIGINAL
FILED
07 JUN 13 AM 11:49
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Matthew Franklin Jaksa (CA State Bar No. 248072)
HOLME ROBERTS & OWEN LLP
560 Mission Street, 25th Floor
San Francisco, CA 94105-2994
Telephone: (415) 268-2000
Facsimile: (415) 268-1999
Email: matt.jaksa@hro.com

E-filing

Attorneys for Plaintiffs,
WARNER BROS. RECORDS INC.;
VIRGIN RECORDS AMERICA, INC.;
BMG MUSIC; MAVERICK RECORDING
COMPANY; INTERSCOPE RECORDS;
SONY BMG MUSIC ENTERTAINMENT;
and ARISTA RECORDS LLC

JCS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

107 308

WARNER BROS. RECORDS INC., a Delaware
corporation; VIRGIN RECORDS AMERICA,
INC., a California corporation; BMG MUSIC, a
New York general partnership; MAVERICK
RECORDING COMPANY, a California joint
venture; INTERSCOPE RECORDS, a California
general partnership; SONY BMG MUSIC
ENTERTAINMENT, a Delaware general
partnership; and ARISTA RECORDS LLC, a
Delaware limited liability company,
Plaintiffs,

v.

JOHN DOE,
Defendant.

CASE NO.

COMPLAINT FOR COPYRIGHT
INFRINGEMENT

JURISDICTION AND VENUE

1
2 1. This is a civil action seeking damages and injunctive relief for copyright infringement
3 under the copyright laws of the United States (17 U.S.C. § 101 *et seq.*).

4 2. This Court has jurisdiction under 17 U.S.C. § 101 *et seq.*; 28 U.S.C. § 1331 (federal
5 question); and 28 U.S.C. § 1338(a) (copyright).

6 3. Venue in this District is proper. See 28 U.S.C. §§ 1391(b), 1400(a). Although the
7 true identity of Defendant is unknown to Plaintiffs at this time, on information and belief, Defendant
8 may be found in this District and/or a substantial part of the acts of infringement complained of
9 herein occurred in this District. On information and belief, personal jurisdiction in this District is
10 proper because Defendant, without consent or permission of the copyright owner, disseminated over
11 the Internet copyrighted works owned and/or controlled by Plaintiffs. On information and belief,
12 such illegal dissemination occurred in every jurisdiction in the United States, including this one. In
13 addition, Defendant contracted with an Internet Service Provider ("ISP") found in this District to
14 provide Defendant with the access to the Internet which facilitated Defendant's infringing activities.

PARTIES

15
16 4. Plaintiff Warner Bros. Records Inc. is a corporation duly organized and existing
17 under the laws of the State of Delaware, with its principal place of business in the State of
18 California.

19 5. Plaintiff Virgin Records America, Inc. is a corporation duly organized and existing
20 under the laws of the State of California, with its principal place of business in the State of New
21 York.

22 6. Plaintiff BMG Music is a general partnership duly organized and existing under the
23 laws of the State of New York, with its principal place of business in the State of New York.

24 7. Plaintiff Maverick Recording Company is a joint venture between SR/MDM Venture
25 Inc. and Maverick Records LLC, organized and existing under the laws of the State of California,
26 with its principal place of business in the State of California.

27 8. Plaintiff Interscope Records is a California general partnership, with its principal
28 place of business in the State of California.

1 9. Plaintiff SONY BMG MUSIC ENTERTAINMENT is a Delaware general
2 partnership, with its principal place of business in the State of New York.

3 10. Plaintiff Arista Records LLC is a limited liability company duly organized and
4 existing under the laws of the State of Delaware, with its principal place of business in the State of
5 New York.

6 11. The true name and capacity of Defendant are unknown to Plaintiffs at this time.
7 Defendant is known to Plaintiffs only by the Internet Protocol ("IP") address assigned to Defendant
8 by his or her ISP on the date and time of Defendant's infringing activity. See Exhibit A. Plaintiffs
9 believe that information obtained in discovery will lead to the identification of Defendant's true
10 name.

COUNT I

INFRINGEMENT OF COPYRIGHTS

13 12. Plaintiffs incorporate herein by this reference each and every allegation contained in
14 each paragraph above.

15 13. Plaintiffs are, and at all relevant times have been, the copyright owners or licensees of
16 exclusive rights under United States copyright law with respect to certain copyrighted sound
17 recordings, including, but not limited to, all of the copyrighted sound recordings on Exhibit A to this
18 Complaint (collectively, these copyrighted sound recordings shall be identified as the "Copyrighted
19 Recordings"). Each of the Copyrighted Recordings is the subject of a valid Certificate of Copyright
20 Registration issued by the Register of Copyrights to each Plaintiff as specified on each page of
21 Exhibit A.

22 14. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the
23 exclusive rights to reproduce the Copyrighted Recordings and to distribute the Copyrighted
24 Recordings to the public.

25 15. Plaintiffs are informed and believe that Defendant, without the permission or consent
26 of Plaintiffs, has continuously used, and continues to use, an online media distribution system to
27 download and/or distribute to the public certain of the Copyrighted Recordings. Exhibit A identifies
28 the IP address with the date and time of capture and a list of copyrighted recordings that Defendant

1 has, without the permission or consent of Plaintiffs, downloaded and/or distributed to the public.
2 Through his or her continuous and ongoing acts of downloading and/or distributing to the public the
3 Copyrighted Recordings, Defendant has violated Plaintiffs' exclusive rights of reproduction and
4 distribution. Defendant's actions constitute infringement of Plaintiffs' copyrights and/or exclusive
5 rights under copyright. (In addition to the sound recordings listed on Exhibit A, Plaintiffs are
6 informed and believe Defendant has, without the permission or consent of Plaintiffs, continuously
7 downloaded and/or distributed to the public additional sound recordings owned by or exclusively
8 licensed to Plaintiffs or Plaintiffs' affiliate record labels, and Plaintiffs believe that such acts of
9 infringement are ongoing. Exhibit A includes the currently-known total number of audio files being
10 distributed by Defendant.)

11 16. Plaintiffs have placed proper notices of copyright pursuant to 17 U.S.C. § 401 on
12 each respective album cover of each of the sound recordings identified in Exhibit A. These notices
13 of copyright appeared on published copies of each of the sound recordings identified in Exhibit A.
14 These published copies were widely available, and each of the published copies of the sound
15 recordings identified in Exhibit A was accessible by Defendant.

16 17. Plaintiffs are informed and believe that the foregoing acts of infringement have been
17 willful, intentional, and in disregard of and with indifference to the rights of Plaintiffs.

18 18. As a result of Defendant's infringement of Plaintiffs' copyrights and exclusive rights
19 under copyright, Plaintiffs are entitled to statutory damages pursuant to 17 U.S.C. § 504(c) against
20 Defendant for each infringement of each copyrighted recording. Plaintiffs further are entitled to
21 their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

22 19. The conduct of Defendant is causing and, unless enjoined and restrained by this
23 Court, will continue to cause Plaintiffs great and irreparable injury that cannot fully be compensated
24 or measured in money. Plaintiffs have no adequate remedy at law. Pursuant to 17 U.S.C. §§ 502
25 and 503, Plaintiffs are entitled to injunctive relief prohibiting Defendant from further infringing
26 Plaintiffs' copyrights, and ordering that Defendant destroy all copies of copyrighted sound
27 recordings made in violation of Plaintiffs' exclusive rights.
28

WHEREFORE, Plaintiffs pray for judgment against Defendant as follows:

1. For an injunction providing:

"Defendant shall be and hereby is enjoined from directly or indirectly infringing Plaintiffs' rights under federal or state law in the Copyrighted Recordings and any sound recording, whether now in existence or later created, that is owned or controlled by Plaintiffs (or any parent, subsidiary, or affiliate record label of Plaintiffs) ("Plaintiffs' Recordings"), including without limitation by using the Internet or any online media distribution system to reproduce (*i.e.*, download) any of Plaintiffs' Recordings or to distribute (*i.e.*, upload) any of Plaintiffs' Recordings, except pursuant to a lawful license or with the express authority of Plaintiffs. Defendant also shall destroy all copies of Plaintiffs' Recordings that Defendant has downloaded onto any computer hard drive or server without Plaintiffs' authorization and shall destroy all copies of those downloaded recordings transferred onto any physical medium or device in Defendant's possession, custody, or control."

2. For statutory damages for each infringement of each Copyrighted Recording pursuant to 17 U.S.C. § 504.

3. For Plaintiffs' costs in this action.

4. For Plaintiffs' reasonable attorneys' fees incurred herein.

5. For such other and further relief as the Court may deem just and proper.

Dated: June 13, 2007

HOLME ROBERTS & OWEN LLP

By: 

MATTHEW FRANKLIN JAKSA

Attorney for Plaintiffs

WARNER BROS. RECORDS INC.; VIRGIN RECORDS AMERICA, INC.; BMG MUSIC; MAVERICK RECORDING COMPANY; INTERSCOPE RECORDS; SONY BMG MUSIC ENTERTAINMENT; and ARISTA RECORDS LLC

Exhibit A

EXHIBIT A**JOHN DOE**

IP Address: 169.229.74.223 2007-01-22 02:18:14 EST	CASE ID# 115543284
P2P Network: GnutellaUS	Total Audio Files: 1349

<u>Copyright Owner</u>	<u>Artist</u>	<u>Recording Title</u>	<u>Album Title</u>	<u>SR#</u>
Warner Bros. Records Inc.	Nina Gordon	Tonight And The Rest Of My Life	Tonight and the Rest of My Life	285-809
Virgin Records America, Inc.	Enigma	Gravity Of Love	The Screen Behind The Mirror	277-091
BMG Music	Foo Fighters	Learn To Fly	There Is Nothing Left To Lose	285-034
Maverick Recording Company	Michelle Branch	Everywhere	The Spirit Room	303-732
Virgin Records America, Inc.	Janet Jackson	All for You	All for You	308-900
Interscope Records	Eminem	Sing for the Moment	Eminem Show	317-924
SONY BMG MUSIC ENTERTAINMENT	Jessica Simpson	Where You Are	Sweet Kisses	276-117
Arista Records LLC	Avril Lavigne	Naked	Let Go	312-786